IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1044 of 2007

Selvam .. Petitioner

Vs

1. State of Tamil Nadu rep. by its
   Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The District Collector and
   District Magistrate
   Tiruvannamalai District
   Tiruvannamalai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein praying to call for the entire records, related to petitioner co-brother's detention under Tamil Nadu Act 14 of 1982 vide detention order, dated 12.7.2007 on the file of the second respondent herein,made in proceedings D.O.No.31/2007-C2, quash the same as illegal and consequently direct the respondents herein to produce the petitioner's co-brother namely Krishnamoorthy, before this Hon'ble High Court and set the petitioner's co-brother,now my co-brother detained at Central Prison, Vellore at liberty from detention.

For Petitioner : Mr.C.C.Chellappan
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, co-brother of the detenu Krishnamoorthy, who was incarcerated by order dated 12.7.2007 of the second respondent under

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the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, and confined at Central Prison, Vellore, seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention in D.O.No.31/2007-C2, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

2. On the basis of the complaint given by one Pandurangan, on 9.6.2007 at 13.30 hours, that after he consumed the illicit arrack bought from the detenu, he felt burning sensation in throat, chest and stomach, vomitted twice, felt giddiness and fell down, a case was registered in Crime No.526/2007 on the file of Tiruvannamalai Prohibition Enforcement Wing under Sections 4(1)(i) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act. The chemical analysis report of the samples taken from the arrack seized from the detenue disclosed that the arrack contained atropine of 6.7 mgms per 100 ml.

3. The second respondent, taking note of the above case as a ground case and finding that there are seven adverse cases in crime Nos.388/2006, 508/2006, 729/2007 and 1172/2006 on the file of Chengam Police Station for the offence under Sections 4(1)(a), 4(1)(g), 4(1)(aaa) read with 4(1-A)(ii) of the Tamil Nadu Prohibition Act and in Crime Nos.167/2006, 306/2007 and 463/2007 on the file of Tiruvannamalai Prohibition Enforcement Wing for the offence under Sections 4(1)(aa) and 4(1)(g) of the Tamil Nadu Prohibition Act, ordered his detention dubbing as a bootlegger.

4. The learned counsel for the petitioner challenges the order of detention on the ground of delay of 33 days in passing the order of detention, from the date of arrest.

5. Admittedly, the detenu was arrested on 9.6.2007 in connection with the ground case. The chemical analysis report was received on 14.6.2007 which disclosed that the sample I.D.arrack contained 6.4 mg/100 ml of atropine, which is dangerous to human life. However, the order of detention was passed only on 12.7.2007. Concededly, there is a delay of 33 days in passing the order of detention.

6. It is settled law that when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority has satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case. Further, when such delay is unsatisfactory and

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unexplained, the same would throw considerable doubt on the genuineness of the subjective satisfaction of the detaining authority leading to a legitimate inference that the detaining authority was not really and genuinely satisfied as regards the necessity for detaining the detenu with a view to prevent him from acting in a prejudicial manner.

7. In the instant case, the delay of 33 days in passing the order of detention has not been explained satisfactorily. Hence, we are of the considered opinion that the said delay vitiates the impugned order of detention. Accordingly, the order of detention is quashed. The habeas corpus petition is allowed. The detenu is directed to be released forthwith, unless he is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The District Collector and
   District Magistrate
   Tiruvannamalai District
   Tiruvannamalai.

3. The Superintendent
   Central Prison, Vellore.

4.The Joint Secretary to Govt., Public
(Law and Order) Dept., Fort Saint George, Chennai-9.

5. The Public Prosecutor
   High Court, Madras.

SA (CO)
km/15.11.

HCP No.1044 of 2007.

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